Helena Contracting Corp. *and* District Council for New York City and Vicinity, United Brotherhood of Carpenters and Joiners of America. Case 2–CA–31120

January 15, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

Upon a charge filed by the Union on December 23, 1997, the Acting General Counsel of the National Labor Relations Board issued a complaint on June 17, 1998 against Helena Contracting Corp., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On October 20, 1998, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On October 22, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. Despite being given four extensions of time to file, the Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated July 8, 1998, notified the Respondent that unless an answer were received by July 22, 1998, a Motion for Summary Judgment would be filed. In addition, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated September 18, 1998, notified the Respondent once again that unless an answer were received by October 2, 1998, a Motion for Summary Judgment would be filed.[1]

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Yonkers, New York, has been engaged in the building and construction industry. Annually, the Respondent, in conducting its business operations described above, sells goods and services valued at more than $50,000 to public utilities, transit systems, newspapers, health care institutions, broadcasting stations, commercial buildings, educational institutions, and/or retail concerns which meet a direct standard for the assertion of jurisdiction. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All carpenters, joiners, and all other covered employees as defined in the Independent Building Construction Agreement, employed by Respondent within the jurisdiction of the Union as defined in the Independent Building Construction Agreement.

On or about September 18, 1996, the Respondent, by its president, Dominick Schifano, executed an Interim Compliance Agreement (the Agreement) with the Union whereby it agreed to execute the successor agreement to be negotiated by the Union with the Associations whose members perform work similar to the work performed by the Respondent.

Based on its execution of the Agreement, the Respondent, an employer engaged in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of the unit employees without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act.

At all times since September 18, 1996, the Union has been the limited exclusive collective-bargaining representative of the unit.

In around October 1996, the Union and the Building Contractors Association, Inc., the Association of Wall-Ceiling & Carpentry Industries of Long Island and New York, Inc., and the Cement League (the Associations), executed a Building Construction Agreement, effective by its terms from 1996 to 2001.

On or about October 28, 1996 and November 12, 1997, the Union, by letter, requested that the Respondent sign and return the successor agreement executed by the Union and the Associations. Since or or about October

[1] Both of these letters sent by the Region by certified mail were returned to the Region as "unclaimed." The Respondent's failure or refusal to accept certified mail cannot defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

28, 1996, the Respondent has failed and refused to execute the successor agreement described above.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the limited exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed and refused to execute the collective-bargaining agreement reached between and executed by the Union and the Associations, we shall order the Respondent to execute that agreement, give retroactive effect to that agreement, and make its employees whole for any losses attributable to the Respondent's failure to execute the agreement. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Helena Contracting Corp., Yonkers, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with District Council for New York City and Vicinity, United Brotherhood of Carpenters and Joiners of America, as the limited exclusive representative of the employees in the bargaining unit set forth below, by failing and refusing to execute the successor collective-bargaining agreement executed by the Union and the Building Contractors Association, Inc., the Association of Wall-Ceiling & Carpentry Industries of Long Island and New York, Inc., and the Cement League in around October 1996.

> All carpenters, joiners, and all other covered employees as defined in the Independent Building Construction Agreement, employed by Respondent within the jurisdiction of the Union as defined in the Independent Building Construction Agreement.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Execute and implement the collective-bargaining agreement executed by the Union and the Associations in around October 1996, give retroactive effect to that agreement, and make the unit employees whole for any losses they have suffered as a result of the Respondent's failure to execute the agreement, with interest, in the manner set forth in the remedy section of this decision.

(b) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its facility in Yonkers, New York, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 28, 1996.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 15, 1999

Sarah M. Fox, Member

Wilma B. Liebman, Member

J. Robert Brame III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail and refuse to bargain in good faith with District Council for New York City and Vicinity, United Brotherhood of Carpenters and Joiners of America, as the limited exclusive representative of the employees in the bargaining unit set forth below, by failing and refusing to execute the successor collective-bargaining agreement executed by the Union and the Building Contractors Association, Inc., the Association of Wall-Ceiling & Carpentry Industries of Long Island and New York, Inc., and the Cement League in around October 1996.

All carpenters, joiners, and all other covered employees as defined in the Independent Building Construction Agreement, employed by us within the jurisdiction of the Union as defined in the Independent Building Construction Agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL execute and implement the collective-bargaining agreement executed by the Union and the Associations in around October 1996, give retroactive effect to that agreement, and make the unit employees whole for any losses they have suffered as a result of our failure to execute the agreement, with interest.

HELENA CONTRACTING CORP.